

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THOMAS S. MCCLOSKEY and
KEVIN P. MCCLOSKEY,

Plaintiffs

v.

ROBERT S. MUELLER, III,
Director of the Federal Bureau of
Investigation; THE FEDERAL
BUREAU OF INVESTIGATION;
WILLIAM H. ANDERSON,
Individually and as an employee of
the Federal Bureau of
Investigation; THE UNITED
STATES OF AMERICA; and
GARY LEE SAMPSON,
Defendants.

2004 SEP 24 P 1:23

U.S. DISTRICT COURT
DISTRICT OF MASS.

1:04-CV-11015-RCL

**JOINT MOTION OF PLAINTIFFS, WILLIAM ANDERSON, *PRO SE*, & THE FEDERAL
DEFENDANTS FOR DISMISSAL OF WILLIAM ANDERSON AS A DEFENDANT IN HIS
INDIVIDUAL CAPACITY**

Defendants, Robert S. Mueller, III, in his official capacity as Director of the Federal Bureau of Investigation (“the FBI”), William H. Anderson in his official position as an FBI employee at the time in question, the FBI, and the United States of America (the “Federal Defendants”), through their attorney, David V. Kirby, Acting United States Attorney for the District of Vermont¹, and William Anderson, *pro se* as to all claims against him in his individual capacity, hereby move jointly with Plaintiffs, Thomas and Kevin McCloskey, for dismissal of all claims against William Anderson in his individual capacity. Plaintiffs’ wrongful death complaint asserts that the Federal Defendants are liable under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680 for alleged negligence, and further, violated constitutional rights

¹ The United States Attorney’s Office for the District of Massachusetts has been recused from this matter. The United States Attorney’s Office for the District of Vermont represents Robert S. Mueller, the FBI, William Anderson in his official capacity, and the United States in this matter.


under 42 U.S.C. § 1983. They allege that the murder of their decedent, Philip McCloskey, by Defendant Gary Sampson, was proximately caused by conduct or omissions of Mr. Anderson in responding to a phone call by Sampson prior to the murder. The Acting United States Attorney has certified that Anderson was acting within the scope of employment with the FBI at the time of the incident at issue. *See* Certification attached hereto. Further, Plaintiffs' counsel has stated that his clients do not seek recovery against Mr. Anderson in his personal capacity, but rather, in his capacity as a federal employee. The parties to this motion agree, therefore, that the claims asserted against William Anderson should be dismissed. The remaining Defendant, Gary Lee Sampson, is presently incarcerated in federal prison and his consent to this motion has not been obtained.

Wherefore, Plaintiffs and the Federal Defendants respectfully request that all claims against William Anderson in his personal capacity be dismissed.

Dated at Brockton, Massachusetts, this 16th day of September, 2004.

Respectfully submitted,

THOMAS S. MCCLOSKEY and
KEVIN P. MCCLOSKEY,
Plaintiffs

By: 
Kevin J. Reddington, Esq.
1342 Belmont Street, Suite 203
Brockton, MA 02301
508-583-4280

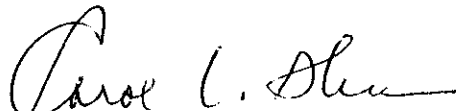
Dated at Burlington, in the District of Vermont, this 21st day of September, 2004.

Respectfully submitted,

UNITED STATES OF AMERICA,
ROBERT S. MUELLER, III,
THE FEDERAL BUREAU OF INVESTIGATION,
and WILLIAM ANDERSON in his official capacity,

DAVID V. KIRBY
Acting United States Attorney

By:



CAROL L. SHEA
Special Attorney
Chief, Civil Division
United States Attorney's Office
P.O. Box 570
Burlington VT 05402-0570
802-951-6725

Dated at Revere, Massachusetts, this 16th day of September, 2004.



William H. Anderson
57 Adams Street
Revere, MA 02151
Pro se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the *pro se* parties and the attorney of record for Plaintiffs by regular mail on September 23, 2004.


Carol L. Shea, Special Attorney